

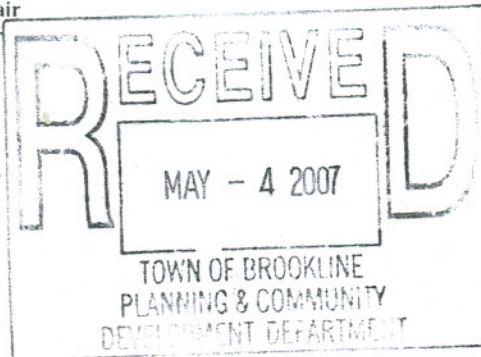


# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Harry Miller, Co-Chair  
Bailey S. Silbert

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333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2210 Fax (617) 730-2248  
Patrick J. Ward, Secretary



TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070017

Petitioners, Pamela and Peter Friedman applied to the Board of Appeals for zoning relief to construct basement/single story addition on the rear of their home at 26 Clearwater Road.

On March 8, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 26, 2007 at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published April 5 and 12, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
NOTICE OF HEARING

**Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **PAMELA and PETER FRIEDMAN**

Location of Premises: **26 CLEARWATER RD BRKL**

Date of Hearing: **04/26/2007**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup>. Floor**

A public hearing will be held for a special permit and/or variance from:

**1) 5.20; Floor Area Ratio; Variance Required.**

**2) 8.02.2; Alteration or Extension; Special Permit Required, of the Zoning By-Law**  
to construct an addition per plans at **26 CLEARWATER RD BRKL.**

Said Premise located in a S-7 District.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Diane R. Gordon  
Harry Miller  
Bailey S. Silbert**

At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Diane Gordon and Board members Bailey Silbert and Jesse Geller. Attorney Jeffery Allen of Seegel, Lipshutz and Wilchins, P.C. 20 William Street, Suite 130, Wellesley, MA presented the case before the Board.

Attorney Allen described the project as a modest addition to the rear of the petitioner's home to accommodate their growing family. The structure is currently a two story garrison colonial style home on a rectangular shaped lot that slopes significantly to the rear. The neighboring homes are similar in style and age to the petitioner's home. A first floor addition



will be constructed above a new basement/foundation. The first floor will be a new family room and area to accommodate internal remodeling. The new portion of the basement will provide a family room, full bath, a mudroom and a new door to the side yard. He explained that the project required relief in the form of a Variance because the relief that could be granted by Special Permit is not adequate for the needs of the family. Attorney Allen suggested that under **Section 5.22.3.c**, the Freidman's could build their addition of 359 s.f. with a Special Permit then finish the basement level at a later date since the Certificate of Occupancy for the dwelling is in excess of ten years old. He stated that the petitioners desire to complete the project in one step, therefore the request for relief in the form of a Variance at this time. He explained that only the new portion of the basement will be finished off. The existing basement has been plagued with water problems making finishing that space problematic. Mr. Allen explained that this area of Brookline has among the town's highest water table. He presented a letter from Mr. John Beninati of Inline Construction, 32 Sexton Street, Sudbury MA, that described the water problem specific to the home. The letter stated that the installation of a retro-fitted perimeter drain to the existing basement while it may limit the water infiltration somewhat would not solve the problem. He felt that the existing foundation was not likely waterproofed, given the age of the home and the high water table coupled with the position of the home on the street, the slope of the driveway and rear yard, the problem could not be corrected entirely. Mr. Beninati stated that the new basement/foundation could be adequately prepared to prevent moisture issues in the addition. Mr. Allen stated that the high water/soil conditions which are unique to this area but not throughout the zoning district, therefore warrant relief in the form of a Variance. He stated

that it would be a hardship to his clients if they could not expand to meet the needs of their growing family and there would be no substantial detriment to the public good, since no change to the home will be visible from the street.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. No-one responded and Attorney Allen reminded the Board of the letter of support for the project from nine neighbors, two of which are direct abutters.

Planner, Adam Serafin, then reviewed the comments and recommendations of the Planning Board. He stated that the petitioners propose to construct an 810 s.f. basement/single story addition to the rear of the existing dwelling. The basement addition will create a new playroom/study/den, full bathroom, and a mudroom/closet. A side door ingress/egress will be created, as well as a new stairwell leading to the first floor. An existing garage door entrance which leads to the backyard will be removed. The first floor addition, to be constructed above the basement addition, will create a new family room with an 11' cathedral ceiling. Existing habitable space within the house will be reconfigured to create a laundry room, move a powder room, create a new staircase leading to the basement and enlarge the existing kitchen. An existing deck in the location of the proposed addition will be removed, and a new deck will be constructed. The exterior of the addition will match the existing exterior of the home.

Mr. Serafin described the relief required as follows:

**Section 5.20 Floor Area Ratio**

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R	0.35 (100%)	<b>0.42</b> (120%)	0.38 (109%)	<b>0.52</b> (149%)	<b>VARIANCE*</b>
Floor Area (s.f.)	1,976	2,370	2,142	2,952	-

\* Under Section 5.22.3.b.1.b, with amendments adopted in spring 2006, the Board may allow by special permit an exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of



120% has not been reached. In this case, the applicant exceeds the maximum allowed FAR by special permit, thus the application will require a variance.

**Section 8.02.2 - Alteration or Extension**

A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Mr. Serafin said that The Planning Board has no objections to this application to create an 810 s.f. addition requiring FAR relief. The Board recognizes the applicants are proposing this addition to accommodate the needs of their growing family. The proposed addition is attractive, and integrates well into the massing and design of the existing building. Therefore, if the Board of Appeals finds that the statutory requirements for a variance have been met, the Planning Board recommends approval of the plans, titled "Friedman Residence", by GEV Design, Inc., and dated 02-13-07, subject to the following condition:

**Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions and stamped and signed by a registered architect or land surveyor; 2) building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that the relief requested required a Variance under **Section 5.20, Floor Area Ratio** and a **Special Permit under Section 8.02.2** because the existing house is on an undersized lot for the zoning district. Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit under **Section 8.02.2** of the Zoning Bylaw and makes the following findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Attorney Allen, during his remarks, suggested that the upper portion of the addition could be built by Special Permit under **Section 5.22.3.c**. However, the plan of record shows the first floor to be 359 s.f.; this would be nine feet in excess of that allowed under this section. Also, Mr. Allen suggested that the balance of the project, finishing the new basement, could be built by right since the certificate of occupancy for the dwelling is at least ten years old. It is noted by the Board that **Section 5.22.1.c** is part of the General Provisions of the Exceptions to Maximum Floor Area Ratio section and the balance of the project is still subject to the requirements of that section. It is the Board's position that relief for the proposed project can be granted only by Variance.

During deliberations the Board determined that they can grant relief in the form of a Variance from **Section 5.20** where the Board specifically finds that owing to circumstances relating to the shape, topography or soil conditions of such land but not affecting generally the zoning district in which it is located, a literal enforcement of the by-law would involve



substantial hardship to the petitioner and granting of the relief would not be detrimental to the public good nor nullify or substantially derogate the intent or purpose of the by-law. After discussion, the Board agreed that the petitioner met the requirements for relief in the form of a variance because of the unusually high water table and topography of the site and voted unanimously to grant all the Variance and Special Permit relief with the following conditions:

**Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision:**

- 1) A final site plan showing dimensions and stamped and signed by a registered architect or land surveyor,**
- 2) Building elevations stamped and signed by a registered architect,**
- 3) Evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

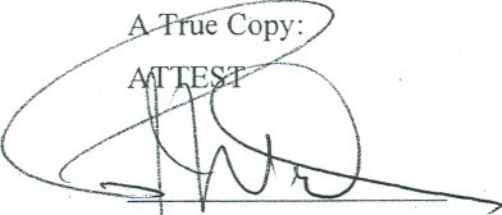
Unanimous Decision of  
The Board of Appeals

  
Diane R. Gordon

Filing Date: May 4, 2007

A True Copy:

ATTEST

  
Patrick J. Ward

Clerk

Board of Appeals

TOWN OF BURLINGTON  
2007 MAY 4